IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 781 OF 1996

Ashok R. Pawar ..Appellant

versus

Aparna alias Pradaom w/o.
Vaibhad Madki & Ors. ..Respondents

Mr. N. Shimpi i/b. D. K. Dhakephalkar for the Appellant.
Mr. S. D. Thokade for Respondent Nos. 1 to 4.
Mr. M. S. Sawant for Respondent No.5.

CORAM : D. G. DESHPANDE,J.

DATE : 8TH FEBRUARY,2005

ORAL ORDER :

1. Heard counsel for the Appellant - owner of the vehicle and counsel for the Respondent Insurance Company and also for the claimant.

2. Claim Petition in Motor Accident Claim Tribunal, Solapur, came to be filed by the claimants, it was allowed by the Tribunal to the extent of Rs.2,70,000/-. But it was awarded only against the owner and the insurance company was

exonerated. Therefore the owner of the vehicle has filed this Appeal.

3. Counsel for the Appellant made two submissions, firstly, there was no proof that the appellant was negligent in driving the motorcycle which resulted in the death of the pillion rider. Secondly, he contended that insurance company was wrongly exonerated. He relied upon the Judgment of the Karnataka High Court reported in **2000 ACJ 385 Oriental Insurance Co. Ltd. vs. Minaxi & others.**, where there is a reference to a Circular in paragraph 13 of the said judgment. It is dated 2.6.1986. It was issued by Tariff Advisory Committee. It is addressed to the Regional Offices of National Insurance Company, Calcutta, New India Assurance Co., Mumbai, Oriental Insurance Co. Ltd. Delhi and United India Insurance Co. Ltd. Madras. There is also reference to the State of Maharashtra. Therefore, firstly, according to the Counsel for the appellant the owner is not liable to pay any compensation, and, secondly, if at all the liability is there, the insurance company has to pay the amount in view of this Circular.

4. I am not inclined to accept submissions of the Counsel for the Appellant that there is no evidence to prove the negligence of the owner of the

vehicle who was also driving the vehicle at the relevant time. Admittedly, at the time of the accident the deceased was a pillion rider. However, the owner has now come up with a theory that the deceased was driving the motorcycle and was not a pillion rider. This is totally a contradictory stand obviously taken to avoid responsibility. When therefore, the party takes a false stand to avoid responsibility, adverse inference has to be drawn against him that this stand is being taken up for obvious reasons. Therefore, this contention is required to be outright rejected.

5. So far as the contentions regarding liability of the insurance company is concerned, counsel for the insurance company relied upon the judgment of the **Orissa High Court reported in 1995 ACJ 189 New India Assurance Co. ltd. vs. Ashok Kumar Acharya and Ors, and Madras High Court Judgment reported in 1987 ACJ 1887 National Insurance Co. Ltd. vs. V. Vasantha & ors.,** in support of his contention that comprehensive policy does not cover the pillion rider. However, in view of this circular dated 2.6.1986 even that argument is not available to the insurance Company. The Circular dated 2.6.1986 read as under:-

Re: Compensation to pillion riders.

Insurer’s attention is invited to section II (1)(a) of standard form for motor cycle, comprehensive policy, sheet 59 of the IMT. It has now been decided that the standard motor cycle comprehensive policy should cover liability to pillion passengers treating them as occupants in the motor cycle and provide indemnity to such persons, who are not carried for hire or reward.

Accordingly, the extra benefit No.2 granting legal liability to cover side car passengers will stand deleted and the standard cover under section 2(1)(a) of the policy is worded as under:

Death or bodily injury to any person including person conveyed in or on the motor cycle provided such person is not carried for hire or reward.

Insurers are requested to issue necessary instructions to their Divisional / Branch Offices accordingly."

Therefore, the position now is clear. Accident in

the present case took place on 25.4.1988, circular is dated 2.6.1986, therefore the circular clearly covers pillion rider and therefore this Appeal is required to be allowed to that extent. In the result, I pass the following order :

ORDER

. Appeal is partly allowed. Order exonerating the insurance company from the liability is set aside and award will be against both the owner and the insurance company. There will be no order as to cost. Certified copy expedited.

8.2.2005 (D. G. DESHPANDE, J.)